

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

D2 Abatement, Inc. and Premier Environmental Solutions LLC, alter egos and District Council 1M, International Union of Painters and Allied Trades (IUPAT), AFL-CIO. Case 07-CA-133250

March 22, 2016

ORDER DENYING MOTION

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

The General Counsel seeks a partial default judgment against Respondent D2 Abatement, Inc. (Respondent D2) on the ground that it has failed to file an answer to the complaint. Upon a charge and amended charges filed by District Council 1M, International Union of Painters and Allied Trades (IUPAT), AFL-CIO (the Union), the General Counsel issued a complaint on October 30, 2015, against Respondent D2 and Respondent Premier Environmental Solutions LLC (Respondent Premier) (collectively, the Respondents), alleging that they are alter egos and have violated Section 8(a)(5), (3), and (1) of the Act. On November 13, 2015, Respondent Premier filed a timely answer to the complaint denying these allegations. Respondent D2 failed to file an answer.

On January 25, 2016, the General Counsel filed with the National Labor Relations Board Motions to Transfer Case to the Board and for Default Judgment against Respondent D2. Thereafter, on January 28, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion for partial default judgment should not be granted.¹ No party filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by November 13, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are

true. Further, the undisputed allegations in the General Counsel's motion disclose that on January 8, 2016, the Region sent by regular mail a letter advising the Respondent D2 that unless an answer to the complaint was received by January 15, 2016, a motion for default judgment would be filed.

As stated above, Respondent D2 failed to file an answer. Nevertheless, we deny the General Counsel's Motion for Partial Default Judgment on the basis that Respondent Premier's timely filed answer precludes the entry of default judgment against Respondent D2.

The Board has declined to enter default judgment against a nonanswering respondent where its alleged liability stemmed from its alleged status as an alter ego of, or single employer with, another respondent that filed a timely answer. See *Metro Demolition Co.*, 348 NLRB 272, 272-273 fn. 6 (2006) (denying default judgment against respondents that failed to file timely answers, where their alleged liability was derivative and stemmed from their alleged status as a single employer with, or an alter ego of, an answering respondent), and cases cited therein. The complaint here alleges that Respondent D2 and Respondent Premier are alter egos. Assuming that the allegations in the complaint are true, the answer filed by Respondent Premier suffices to preclude entry of default judgment against Respondent D2. In these circumstances, Respondent Premier's timely filed answer denying the allegations precludes default judgment against Respondent D2. We therefore deny the General Counsel's motion.

ORDER

IT IS ORDERED that the General Counsel's Motion for Partial Default Judgment is denied and the proceeding is remanded to the Regional Director for Region 7 for further appropriate action.

Dated, Washington, D.C. March 22, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

¹ The Order Transferring and Notice to Show Cause mistakenly stated that cause be shown why the "motions" should not be granted. As is clear from the context of the Order, the motion to transfer the proceeding to the Board was granted.

(SEAL) NATIONAL LABOR RELATIONS BOARD